

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
ROY EDWARD DABBS and)	CASE NO. 05-30712 HCD
JOY LURAY DABBS,)	CHAPTER 7
)	
DEBTORS.)	

Appearances:

Loraine P. Troyer, Esq., attorney for debtors, 121 North Third Street, Goshen, Indiana 46526; and

William L. Law III, Esq., attorney for Trustee, Warrick & Boyn, LLP, 121 West Franklin Street, Suite 400, Elkhart, Indiana 46516.

Gary D. Boyn, Esq., Chapter 7 Trustee, Warrick & Boyn, LLP, 121 West Franklin Street, Suite 400, Elkhart, Indiana 46516.

MEMORANDUM OF DECISION

At South Bend, Indiana, on November 14, 2005.

Before the court is the Trustee's Objection to Allowance of Claimed Exemption, brought by the Chapter 7 Trustee Gary D. Boyn, Esq. The debtors, Roy Edward Dabbs and Joy Luray Dabbs, claimed an exemption in a settlement annuity, and the Trustee wants it disallowed in its entirety. A hearing was held on the Trustee's Objection on June 23, 2005, with Loraine P. Troyer, Esq., present for the debtors and William L. Law, Esq., present for the Trustee. The court directed the parties to file simultaneous briefs on or before July 25, 2005, and replies by August 1, 2005. Only the Trustee filed a brief. On August 9, 2005, after the time for filing briefs had expired, the court took the matter under advisement.

Jurisdiction

Pursuant to 28 U.S.C. § 157(a) and Northern District of Indiana Local Rule 200.1, the United States District Court for the Northern District of Indiana has referred this case to this court for hearing and

determination. After reviewing the record, the court determines that the matter before it is a core proceeding within the meaning of § 157(b)(2)(B) over which the court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(1) and 1334. This entry shall serve as findings of fact and conclusions of law as required by Federal Rule of Civil Procedure 52, made applicable in this proceeding by Federal Rule of Bankruptcy Procedure 7052. Any conclusion of law more properly classified as a factual finding shall be deemed a fact, and any finding of fact more properly classified as a legal conclusion shall be deemed a conclusion of law.

Background

The facts, although scanty, are not disputed. Roy E. and Joy L. Dabbs filed a chapter 7 bankruptcy petition on February 21, 2005. On Schedule C they claimed that a settlement annuity, in the amount of \$9,000, was exempt under Indiana Code § 30-4-3-2. According to the Trustee, the annuity was created as a settlement of a personal injury lawsuit. It carried an \$18,000 value, with payments to the debtors of \$9,000 in February 2006 and \$9,000 in February 2011.

The Trustee asserts in his brief that the settlement annuity is part of the bankruptcy estate and is not exempt. *See* R. 40 at 1. He argues that the debtors' annuity, created to settle a lawsuit rather than to establish a pension plan, is a self-settled negotiated annuity that is not exempt by operation of Indiana Code § 30-4-3-2. Relying on *Walro v. Striegel*, 131 B.R. 697 (S.D. Ind. 1991), which discussed the effect of that Indiana statute on periodic annuity payments, he contends that "a negotiated personal injury settlement is considered a self-settled trust [and] is not entitled to spendthrift protection." *Id.* at 3.

Discussion

The procedure concerning exemptions is clearly set forth in Federal Rule of Bankruptcy Procedure 4003. The debtor first lists in his bankruptcy schedules any exemption he claims in his property. *See* Fed. R. Bankr. P. 4003(a). Within 30 days after the § 341 meeting of creditors is concluded, a trustee or other party in

interest may file an objection to a claimed exemption. *See* Fed. R. Bankr. P. 4003(b). In this case, the first meeting of creditors was held on March 29, 2005, and the Trustee's Objection was timely filed on April 18, 2005. *See* R. 18. The burden of proving that the exemption was not properly claimed is on the objecting party, in this case the Trustee. *See* Fed. R. Bankr. P. 4003(c). A trustee is entitled to a hearing on his objection. *See In re Yonikus*, 996 F.2d 866, 873 (7th Cir. 1993). If the trustee successfully makes the initial proof, the burden then shifts to the debtor to show that the exemption was properly claimed.

[O]nce the exemption has been claimed, FRBP 4003(c) provides that the objecting party has the burden of production and persuasion, and therefore must produce evidence to rebut the presumptively valid exemption. The Ninth Circuit further noted that while the burden of persuasion always remains with the objecting party, if the objecting party can produce evidence to rebut the presumption, then the burden of production shifts to the debtor to come forward with unequivocal evidence to demonstrate that the exemption is proper.

Kelly v. Locke (In re Kelley), 300 B.R. 11, 16-17 (9th Cir. B.A.P. 2003) (citing *In re Carter*, 182 F.3d 1027, 1029 (9th Cir.1999) and Fed. R. Evid. 301). In this case, the Trustee has met his burden by presenting sufficient evidence to rebut the presumptive validity of the debtors' claim. The debtors, however, have failed to come forward with any evidence to demonstrate the propriety of the exemption.

The debtors (by listing the property in their schedules) and the Trustee agree that the settlement annuity is property of the bankruptcy estate, which broadly consists of "all legal and equitable interests of the debtor in property as of commencement of the case." 11 U.S.C. § 541(a). However, the debtors claim that the annuity payments are exempt property because they fall within the terms of Indiana Code § 30-4-3-2.¹ That statute sets forth Indiana's requirements for a spendthrift trust. It provides:

§ 30-4-3-2. Power to restrain transfer of a beneficiary's interest

Sec. 2. (a) The settlor may provide in the terms of the trust that the interest of a beneficiary may not be either voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

¹ Indiana has opted out of the federal exemption scheme under 11 U.S.C. § 522(b)(1). However, the debtors did not claim that the settlement annuity was exempt under Indiana's exemption law, Indiana Code § 34-55-10-2. The court therefore does not reach the question whether the annuity qualifies for an exemption under that statute.

(b) Except as otherwise provided in subsection (c), if the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of his beneficial interest will not prevent his creditors from satisfying claims from his interest in the trust estate.

(c) Subsection (a) applies to a trust that meets both of the following requirements, regardless of whether or not the settlor is also a beneficiary of the trust:

(1) The trust is a qualified trust under 26 U.S.C. 401(a).

(2) The limitations on each beneficiary's control over the beneficiary's interest in the trust complies with 29 U.S.C. 1056(d).

(d) A trust containing terms authorized under subsection (a) may be referred to wherever appropriate as a trust with protective provisions.

Ind. Code § 30-4-3-2 (amended 1987).

Since its amendment in 1987, the statute has been analyzed by several courts. It now is clear that a pension plan which meets the requirements of subsection (c) is a spendthrift trust protected under Indiana law and is not included in the bankruptcy estate. *See In re LeFeber*, 906 F.2d 330, 331 Cir. 1990) (per curiam) (“Because the restrictions on transfer of the beneficial interest in the pension are enforceable under Indiana law, the pension was properly excluded from the bankruptcy estate.”). However, an annuity contract has been found not to constitute a spendthrift trust under Indiana law and therefore was neither excludable (under 11 U.S.C. § 541(c)(2)) nor exempt (under Indiana Code § 27-2-5-1) from the bankruptcy estate. *See Walro v. Striegel (In re Striegel)*, 131 B.R. 697, 701-02 (S.D. Ind. 1991) (stating that the annuity could not be considered a spendthrift trust under Indiana Code § 30-4-3-2, either). Similarly, lottery winnings which, by agreement of the parties, were paid out through an annuity contract in weekly payments, did not qualify as a spendthrift trust under Indiana Code § 30-4-3-2. *See Brown v. Boyn (In re Brown)*, 86 B.R. 944, 947-48 (N.D. Ind. 1988). The court noted that “the key factor [disqualifying the annuity agreement under that statute] appears to be the accessibility of the funds.” *Id.* at 948. Other courts have rejected a debtor's claimed exemption because the debtor's access to, or control of, the subject funds violated the spendthrift trust requirement forbidding that ability. *See, e.g., In re Gifford*, 93 B.R. 636, 639-40 (Bankr. N.D. Ind. 1988) (finding that debtor's interest in a retirement fund was not a spendthrift trust under Indiana Code § 30-4-3-2 because it did not satisfy the “control requirement” that a debtor/beneficiary not

be able to control the funds); *In re Simon*, 170 B.R. 999, 1001-02 (Bankr. S.D. Ill. 1994) (finding under Illinois law that a personal injury settlement agreement that made periodic payments through an annuity was a contractual right to payments, not a trust).

It is clear, from the case law, that the restrictions on spendthrift trusts were imposed because of “the public policy against allowing anyone to place their assets in trust, for their own benefit, and simultaneously shielding them from the claims of their creditors.” *In re Gifford*, 93 B.R. at 637. When a debtor, as beneficiary, “has a present ability to control these funds” and “can exercise control over the trust asset for his own benefit,” then the “plan does not satisfy the control requirement for a spendthrift trust under Indiana Law” and it “is property of the bankruptcy estate.” *Id.* at 640.

It is the burden of the debtors to establish that the annuity met Indiana’s definition of spendthrift trust and that it fit under the exception of § 541(c)(2) or could be claimed as an exemption. *See In re Striegel*, 131 B.R. at 701; *Miller v. Lincoln Nat’l Bank & Trust Co. (In re Cook)*, 43 B.R. 996, 1001 (N.D. Ind. 1984); *In re Simon*, 170 B.R. at 1002-04. In this case, the debtors have not shown that the settlor is not a beneficiary, that the annuity contains an anti-alienation clause, or that the debtor-beneficiary does not have present control over the plan corpus. *See id.* Nor have they produced evidence that the annuity was intended as a tax-qualified plan under applicable provisions of the Internal Revenue Code. The court finds, therefore, that the debtors have not been successful in rebutting the Trustee’s prima facie case by demonstrating that they could claim the Indiana exemption in their settlement annuity under Indiana Code § 30-4-3-2.

The court finds, from the Trustee’s unchallenged facts, that this settlement annuity was created to settle a personal injury lawsuit, not to fund a pension plan. Under the negotiated settlement agreement, the debtors are to receive two annuity payments of \$9,000. It is the court’s view that the settlement agreement gave the debtors a present right to those future payments. *See In re Striegel*, 131 B.R. at 702-03. There is nothing in the record to indicate that the settlement agreement was a trust or any other instrument that might exclude or exempt it from the bankruptcy estate. *See In re Simon*, 170 B.R. at 1002 (concluding that, without evidence that would except

the payments from the estate, the debtor's interest in the payments was an asset of the estate). Whether the annuity is considered a contractual right to payments or a self-settled trust in which the settlors kept a right to income payments, it is the case that the debtors are present beneficiaries of the annuity payments. That income is property of the debtors and thus property of their bankruptcy estate. Because the debtors have not shown that the settlement annuity qualifies as exempt property under any provision of Indiana Code § 30-4-3-2, the court finds that it does not constitute an exemption under state law.

Conclusion

For the reasons presented above, the court determines that the settlement annuity is property of the estate and is not exempt under the terms of Indiana Code § 30-4-3-2. Accordingly, the Trustee's Objection to Allowance of Claimed Exemption is sustained. The exemption claimed in the settlement annuity is disallowed.

SO ORDERED.

/s/ Harry C. Dees, Jr.
HARRY C. DEES, JR., CHIEF JUDGE
UNITED STATES BANKRUPTCY COURT